Judgment of the General Court (Fifth Chamber) of 24 March 2011 — Cybergun v OHIM – Umarex Sportwaffen (AK 47)

(Case T-419/09)

(Community trade mark — Invalidity proceedings — Community word mark AK 47 — Absolute ground for refusal — Descriptive character — Article 7(1)(c) and Article 52(1)(a) of Regulation (EC) No 207/2009)

1. *Community trade mark — Appeals procedure — Appeal brought against a decision of a unit of the Office ruling at first instance and referred to the Board of Appeal — Functional continuity between those two bodies — Examination of the appeal by the Board of Appeal — Scope (Council Regulation No 207/2009, Art. 64(1)) (see paras 15-18)*

2. *Community trade mark — Surrender, revocation and invalidity — Absolute grounds of invalidity — Registration contrary to Article 7(1)(c) of Regulation No 207/2009 (Council Regulation No 207/2009, Arts 7(1)(c) and 52(1)(a)) (see paras 37, 42-45)*

Re:

ACTION brought against the decision of the First Board of Appeal of OHIM of 5 August 2009 (Case R 1101/2007-1) relating to invalidity proceedings between Umarex Sportwaffen GmbH & Co. KG and Cybergun SA.

Information relating to the case

Registered Community trade mark of which cancellation sought:	Word mark AK 47 for goods in Class 28 — Community trade mark No 4528378

Proprietor of the Community trade mark:	Cybergum SA
Party requesting the declaration of invalidity of the Community trade mark:	Umarex Sportwaffen GmbH & Co. KG
Decision of the Cancellation Division:	Rejection of the application for a declaration of invalidity of the mark concerned
Decision of the Board of Appeal:	Annulment of the decision of the Cancellation Division and declaration of invalidity of the Community trade mark

Operative part

1. Dismisses the action;

2. Orders Cybergun SA to pay the costs.

Judgment of the General Court (Fifth Chamber) of 24 March 2011 — Cybergun v OHIM – Umarex Sportwaffen (AK 47)

(Case T-503/09)

(Community trade mark — Invalidity proceedings — Community word mark AK 47 — Absolute ground for refusal — Descriptive character — Article 7(1)(c) and Article 52(1)(a) of Regulation (EC) No 207/2009)

Community trade mark — Surrender, revocation and invalidity — Absolute grounds of invalidity — Registration contrary to Article 7(1)(c) of Regulation No 207/2009 (Council Regulation No 207/2009, Arts 7(1)(c) and 52(1)(a)) (see paras 18, 23-29)